

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1 and 6-20 are pending in the application, with claims 1, 11, 12, 18, 19 and 20 being the independent claims. Claims 1 and 7 have been amended. Support for the amendment to claim 1 can be found in the specification on page 14, line 25 through page 15, line 2. New claims 8-20 are sought to be added. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Description of the Invention

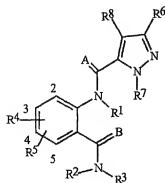
The present invention relates to novel active compound combinations comprising a synergistically effective amount of a compound of formula (I) and at least one compound of formula (II) wherein the compound of formula (I) and the compound of formula (II) are present in a ratio of from 250:1 to 1:50.

Rejections under 35 U.S.C. § 103

The rejection of claim 1 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lahm et al., WO 03/015518 ("Lahm"), in view of Angst et al., WO 02/37964 ("Angst") is respectfully traversed.

A. Prima facie Case of Obviousness Has Not Been Established

Lahm discloses a very broad genus of compounds of formula I



wherein R¹-R⁸ may be a large number of substituents. Thus, Lahm discloses hundreds of thousands of compounds. Lahm also generally discloses that compounds of Formula I can be mixed with one or more other biologically active compounds or agents, such as insecticides, fungicides, nematocides, bactericides, acaricides, growth regulators, etc. Lahm mentions hundreds of such insecticides, fungicides, nematocides, bactericides and acaricides. Thus, Lahm discloses an infinite number of possible combinations of anthranilamide compounds of Formula I and one or more other biologically active compounds or agents. Compound II-1-4, the elected compound of the present application, is one compound among 860 specifically disclosed compounds in Lahm. (Lahm, Index Table A, at pages 100-123).

Angst is directed to compositions comprising N-cyanomethyl-4-(trifluoromethyl)nicotinamide and at least one further pesticidally active substance and which are suitable for the simultaneous control of pests. The compounds disclosed in Angst are of a completely different structure than the anthranilamides of the present claims.

However, according to the Examiner:

Lahm *et al.* also teaches that compounds of formula I, such as 3-bromo-N-[4-chloro-2-methyl-6-{{(methylamino)carbonyl}phenyl}]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, can be combined with at least one additional biologically active compound, to provide broader spectrum pesticide activity (p. 10, lines 24-27; p. 96, lines 23-28). Particularly, it is taught that preferred compounds for preparing mixtures with compounds of formula (II) include neonicotinoid compounds such as clothianidin (p. 97, line 37-p. 98, line 2; p. 141, claim 6 and 9). Lahm *et al.* teaches that compounds such as 3-bromo-N-[4-chloro-2-methyl-6-{{(methylamino)carbonyl}phenyl}]1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide exhibit activity towards a broad variety of pests (p. 91, line 32-p. 96, line 22).

Office Action, p. 6. Applicants respectfully disagree and submit that the Examiner has not established a *prima facie* case of obviousness. The Examiner is using impermissible hindsight and has reconstructed the claimed invention based solely on the Applicant's disclosures.

The present claims are directed to a synergistically effective amount of an neonicotinoid compound of formula (I) and at least one anthranilamide compound of formula (II) wherein the compound of formula (I) and the compound of formula (II) are present in a ratio of from 250:1 to 1:50. Claims 8-11 recite specific ratios of combination and specific neonicotinoid compounds of formula (I). Claims 12-18 recite a composition consisting essentially of a compound of formula (I) and at least one anthranilamide compound of formula (II) wherein the compound of formula (I) and the compound of formula (II) are present in a ratio of from 625:1 to 1:50.

Lahm does not provide a person of ordinary skill in the art any reason to select the specifically claimed neonicotinoid compounds of formula (I) from among the thousands of generally disclosed compounds in Lahm in order to obtain a synergistic

combination. In fact, the Examiner admits that "it is not explicitly taught that the combination is synergistic, or that the ratio range for clothianidin to 3-bromo-N-[4-chloro-2-methyl-6-((methylamino)carbonyl)phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide ranges from 250:1 to 1:50." Office Action, p. 7. Angst does not cure the deficiencies of Lahm. Angst discloses N-cyanomethyl-4-(trifluoromethyl)nicotinamide having a structure that is significantly different from the anthranilamides of the present invention. Applicants respectfully disagree with the Examiner's statement that "as it is taught that 3-bromo-N-[4-chloro-2-methyl-6-((methylamino)carbonyl)phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide is preferably combined with clothianidin, and Angst *et. al.* teaches that compositions comprised of clothianidin and other neonicotinoid compounds provide synergistic pesticide action, one of ordinary skill in the art would have expected that combining 3-bromo-N-[4-chloro-2-methyl-6-((methylamino)carbonyl)phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide with clothianidin would also have provided a synergistic pesticide effect." Office Action, p. 8.

Applicants reiterate that the compound of Angst has a completely different structure than the carboxamides of Lahm. Neither Lahm nor Angst provide any reason for a person of ordinary skill in the art to substitute the N-cyanomethyl-4-(trifluoromethyl)nicotinamide of Angst with the anthranilamides of the present invention at the claimed ratios.

Applicants are aware of the flexible approach for establishing obviousness set out in *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007). However, as cautioned by Judge Rader in a post-*KSR* decision in *In re Kubin*, 561 F.3d 1351 (Fed. Cir. 2009), "where a

defendant merely throws metaphorical darts at a board filled with combinatorial prior art possibilities, courts should not succumb to hindsight claims of obviousness." (561 F.3d at 1359.) In rendering the rejection, the Examiner selected compound II-1-4 disclosed in Lahm, and found the claimed neonicotinoids by picking and choosing from a vast number of optional mixing partners disclosed in Lahm, based on impermissible hindsight. Furthermore, even if one would have picked and chosen the presently claimed combinations, one would not have any expectation other than merely additive effect of the combination. As such, Applicants contend that the Examiner's rejection is based on impermissible hindsight.

B. Synergistic Effect

Even assuming, *arguendo*, that a *prima facie* case of obviousness has been established, which it has not, the synergistic effect exhibited by the claimed invention is sufficient to rebut a *prima facie* case of obviousness.

Applicants submit that the present invention possesses synergistic effect as shown in the specification and the Declaration of Dr. Wolfram Andersch ("the Declaration"), filed October 27, 2009.

The Declaration demonstrates that compounds of formula II and compounds Ia, Im and Ik when applied in combination at ratios of 10:1 to 1:25 exhibit an efficacy much higher than the efficacy of the composition calculated according to the Colby formula.

The unexpected results rebut any *prima facie* case of obviousness of claim 1 over Lahm in view of Angst. Withdrawal of the rejection is respectfully requested.

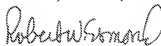
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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